of justification must state the facts specifically to sustain the same, and where it is a charge of crime, the plea must specify the crime and show its commission with the same certainty as in an indictment. In other words, it is not sufficient to answer that the charge is true, but the facts which show the same to be true must be stated: Town. Slan. and Lib., §§ 355 and 358; Folk. Stark. Slan. and Lib., § 483 and notes 16 and 18; *Atteberry* v. *Powell*, 29 Mo. 429; *Smith* v. *Tribune Co.*, 4 Bliss 477; *Shepard* v. *Merrill*, 13 John. 475.

IV. The court instructed the jury that the plea of justification must be established by defendant "to your entire satisfaction, by which I here and elsewhere mean that the evidence in the case must produce an abiding conviction in your mind" of the truth of the charge, and declined to instruct that the offence charged must be proven beyond a reasonable doubt, or with the certainty required to sustain an indictment. This is a vexed and still unsettled question in the law. The authority of the text-writers, it is submitted, is against the rule laid down in the charge: 2 Greenl. Ev., § 426; Townshend on Slander, § 404. In some cases, where the defence is on the ground of fraud or crime on the part of the plaintiff, as in *Scott* v. *Home Ins. Co.*, 1 Dillon 105, where, in an action on a policy of insurance, the defence was that plaintiff had set his own house on fire, it must be conceded that the weight of authority is in favor of the rule in civil, and not that in criminal, cases. But these authorities do not apply to a case of libel. See, however, the authorities collected and the subject ably discussed in the note to *Kane* v. *Hibernia Ins. Co.*, 17 Am. Law Reg. N. S. 302.

H. B. JOHNSON.

Supreme Court of Mississippi.

SCHMIDLAPP ET AL. *v.* S. D. CURRIE ET AL.

One partner cannot convey firm assets in satisfaction of a private debt, to the exclusion of firm creditors, without the assent of his co-partners.

He may do so, however, if the entire firm participate in the assignment. This, of course, where there is no fraud.

The lien of a firm creditor on firm assets is not superior to that of an ordinary creditor upon the property of an individual debtor.

The doctrine of the primary application of firm assets to firm debts, and individual property to individual debts, is only a principle of administration adopted by the courts when called upon to wind up the firm business, and they find no valid change or disposition of the assets has been previously made by the members; but the principle itself springs out of the obligation to do justice between the partners.

THE case is fully stated in the opinion.

The opinion of the court was delivered by

CHALMERS, J.—Harvey & Washington were partners in a liquor saloon, the former having contributed the capital and the latter his services. Harvey having become indebted to Odeneal, transferred to him, in part payment of the indebtedness, and with the knowledge

and consent of Washington, the entire business and stock of the partnership. Odeneal subsequently took in Currie as a partner, and the business was continued under the style of S. D. Currie & Co. The debt of Harvey to Odeneal, which formed the consideration of the transfer, was the individual debt of Harvey, for which neither Washington nor the firm of Harvey & Washington, as a firm, were in any way responsible; but Washington assented to and acquiesced in the sale. After the sale, Schmidlapp & Brothers, creditors of the firm of Harvey & Washington, sued out a writ of attachment against them, and caused the same to be levied on their former goods, in the possession of S. D. Currie & Co., and upon the ground that the transfer of the firm goods, in satisfaction of the individual debt of one of the partners, was fraudulent and void as against firm creditors.

Is the principle assumed a sound one? Is it true that partnership assets cannot, by the act or consent of all the partners, be assigned in liquidation of the private debt of one of the members, so as thereby to defeat the claims of firm creditors? The authorities on the question are divided, and in Burns on Fraudulent Conveyances it is broadly stated that such conveyances are voluntary and void as to firm creditors, but it is doubtful from the cases cited, whether the author is alluding to transfers made by one partner alone, without the assent of his co-partners, or whether he embraces assignments participated in by the entire firm. If the former, the proposition is indisputable. If the latter, we think the sounder reasoning and the weight of authority are against him. We speak of cases like the present, where there is no pretence of actual fraud, and where there is no showing that the firm was at the time insolvent, though, according to some of the cases, the insolvency of the firm would not affect the result. The firm creditors at large, of a partnership, have no lien on its assets, any more than ordinary creditors have upon the property of an individual debtor. The power of disposition over their property inherent in every partnership is as unlimited as that of an individual, and this *jus disponendi* in the firm, all the members co-operating, can only be controlled by the same considerations that impose a limit upon the acts of an individual owner; namely, that it shall not be used for fraudulent purposes. So long as the firm exists, therefore, its members must be at liberty to do as they choose with their own,

and even in the act of dissolution they may impress upon its assets such character as they please. The doctrine that firm assets must first be applied to the payment of firm debts, and individual property to individual debts, is only a principle of administration adopted by the courts, when from any cause they are called upon to wind up the firm business, and find that the members have made no valid disposition of, or charges upon its assets. Thus, when upon a dissolution of the firm by death, or limitation, or bankruptcy, or from any other cause, the courts are called upon to wind up the concern, they adopt and enforce the principle stated; but the principle itself springs alone out of the obligation to do justice between the partners. The only way to accomplish this is to so marshal the assets that property which was owned in common shall be applied to the joint debts, and that which was separately owned, shall be applied to the liabilities of the separate owner, so that neither class of creditors shall be allowed to trespass upon the fund belonging to the other until the claims of that other shall have been satisfied. This right of the creditors is therefore really the right of their debtors, and enures to them derivatively from the debtors. Hence, it is said the lien or *quasi* lien of the creditors "is worked out through the partners," the meaning of which is that the firm creditors may demand the primary application of the firm assets to the payment of their debts because each one of the partners would have a right to demand this as against his co-partners. It must follow, therefore, that if at a time when the firm was still in existence, where no legal liens of any sort have attached, where it was neither bankrupt nor contemplating bankruptcy, all the members have agreed to a particular disposition of its assets, and that disposition is neither colorable nor fraudulent, that is to say, is upon a bona fide consideration, and reserves no benefit to the grantees, inasmuch as none of the partners can be heard to complain of such disposition, so none of the creditors of the firm or of the individual members composing it can question or attack it.

Conceding, as all the authorities do, that the firm creditors have no independent right to demand to be first paid, but derive that right solely by, through, and under the right which the partners have to insist that this shall be done, it is impossible to see how the rule can be enforced where all the members of the firm have,

before the dissolution and without any ground to suspect fraud, given to the assets a different direction.

While some courts of high repute have taken a different view, we confess our inability to escape the logic of this proposition. The courts of New York, New Hampshire, Illinois, and perhaps other states, seem to have taken a different view of the question. In consonance with our view are the following, among other authorities: *Whitten* v. *Smith*, Freeman's Ch. R. 231; *Freeman* v. *Stewart*, 41 Miss. 139; *Carter* v. *Beavan*, 6 Jones' Law (N. C.) 44; *Rice* v. *Barnard*, 20 Vt. 479; *Nat. Bank* v. *Sprague*, 20 N. J. Eq. 14; *Allen* v. *Centre Valley Co.*, 21 Conn. 130; *Sigler* v. *Knox Co. Board*, 8 Ohio St. 511; *Ex parte Riffin*, 6 Vesey 119; *Campbell* v. *Mullett*, Swanst. Ch. 550.

Judgment affirmed.

Court of Appeals of New York.

SAMUEL BERTHOLF *v.* JAMES O'RIELLY.

The constitutionality of an act of the legislature is to be determined solely by its repugnancy to constitutional restraints or prohibitions. No violation of natural justice and equity is sufficient.

That a statute impairs the value of property, or interferes with its lawful use by imposing a liability for the consequences of a lawful act, does not make it unconstitutional. All property is held subject to the power of the state to regulate or control its use to secure the general safety and welfare.

It is no objection to the validity of a statute that it gives a right of action or imposes a liability unknown to the common law.

A statute making the owner of premises on which liquor is sold liable for all damages resulting from the intoxication of the persons purchasing the liquor, and this without reference to any negligence of the owner, or to the lawfulness or unlawfulness of his tenant's action, *held*, valid as a police regulation of the traffic in intoxicating liquors.

THIS was an action under a statute of April 29th 1873, commonly called the Civil Damage Act, and was brought by the plaintiff against the defendant as the landlord of hotel premises, let with knowledge that intoxicating liquors were to be sold thereon by the lessee, to recover the value of a horse owned by the plaintiff, which died in consequence of having been overdriven by the plaintiff's son while in a state of intoxication, produced in part by liquor sold him by the lessee at his bar on the leased premises. The essential facts, as established by the verdict, were as follows: